IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

MFA.No. 398 of 2000()

OPMV.954/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT: PETITIONER

N.M.MUSTHAFA, AGED 30 YEARS,
S/O. MOIDEENKUTTY, NALAKATH
EDAKKAPPARAMBA HOUSE,
P.O. KANNAMANGALAM, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: RESPONDENTS
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1. **K.SAIDALAVI, AGED 25 YEARS,**
   S/O.KUTTIRAYAEEN, KAMMALI HOUSE,
   PULIYAMPARAMBU, KARIPUR,
   (DRIVER OF THE VEHICLE NO.KL 10/B 4770 JEEP).

2. **K.ABDUL KAREEM, S/O.K.KOYAMUTTY,**
   KORAMBILAKKAL HOUSE, P.O./ PALLIKKAL,
   MALAPPURAM DISTRICT.
   (OWNER OF THE VEHICLE NO.KL 10/B 4770 JEEP)

3. **KERALA STATE INSURANCE DEPARTMENT**
   DISTRICT INSURANCE OFFICE, KOZHIKODE,
   POLICY NO. 1076/1844/93/KKD.
   CERTIFICATE NO.3128/91.

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.398 OF 2000

Dated 25th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner while riding a motor cycle met with an accident when it collided with a vehicle insured by the third respondent insurance department. He claimed a compensation of Rs.2,00,000/=. Tribunal assessed a compensation of Rs.44,000/=. But, finding contributory negligence on his part, only Rs.22,000/= was awarded. Finding of contributory negligence and quantum of compensation are disputed in this appeal. The appellant was aged 25 at the time of accident and he was an Agriculturist. The Tribunal has assessed 10% disability and Rs.20,000/= was awarded for disability on a rough and ready basis. It was not calculated on a multiplier method. First we will consider the income of the appellant to calculate compensation for disability. According to him, he was aged 25 and he was an agriculturist. No evidence was adduced to show that he was earning any income at that time. Therefore, we take annual notional income of Rs.15,000/= as the accident occurred on 31.3.1994. Ext.A5 disability certificate shows that there is 30% permanent disability. With regard to the injuries concerned, his big toe through inter-phalangial joint was amputated and there was

traumatic amputation of tip of third right toe. There was fracture of right forearm also. Since disability certificate assessing 20% disability was produced, it was discarded for producing the certificate belatedly. The Tribunal assessed disability at 10% and as per the Workmen's Compensation Act, for amputation of great toe through metatarso-phalangeal joint, loss of earning capacity is fixed as 14% and for amputation of tip of third toe as 1%. Apart from the above, there was fracture of right forearm and deep lacerated wounds on many parts of the body. In the above circumstances, we are of the view that 20% disability ought to have been assessed by the Tribunal even if disability certificate is discarded and if compensation is calculated for 20% disability, taking 17 as the multiplier considering the age of the claimant, the amount payable would be Rs.51,000/= (Rs.15,000 x $\frac{20}{100}$ x 17 = Rs.51,000/-). Tribunal has awarded Rs.20,000/=. So, balance will be Rs.31,000/=.

2. Tribunal found that the appellant was negligent by 50%. F.I.R was registered alleging negligence on the part of the second respondent driver of the vehicle insured by the third respondent. There is no evidence to show that the appellant was charge sheeted. No scene mahazar was

produced. Report of the Assistant Motor Vehicle Inspector was also not produced to show the damages caused to the vehicles and there was no independent evidence to show that the accident was occurred solely due to the negligence of the second respondent. The accident occurred in a public road due to head on collision. Therefore, Tribunal has correctly found that there was 50% negligence each on both drivers. Therefore, we are not disturbing the finding of contributory negligence. Out of the additional amount of Rs.31,000/= calculated, appellant is entitled to only 50%, i.e, Rs.15,500/=. The above amount of Rs.15,500/= should be deposited by the third respondent insurance department with 7% interest from the date of application till its deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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